

REMARKS

In response to the final Official Action of November 17, 2005, minor correction has been made to the specification to correct grammatical and reference numeral errors and claims 1, 17 and 23 have been amended in a manner which is believed to particularly point out and distinctly claim the present invention. In addition, claims 25-41 are newly presented.

With regard to the amendments to the specification, these amendments are all of a minor nature and correct grammatical errors and reference number errors. Thus, with regard to the reference numeral correction at page 9, line 24, it is clear that the first base station (10) sends WORD 2 to mobile station (18) since there is no mobile station (16). Figure 2 makes this clear. Similarly, with regard to the correction at page 10, line 3, the second base station is base station (12) rather than (2) since there is no base station (2) shown in Figure 2. No new matter is therefore presented in these amendments to the specification.

Preliminarily, applicant's attorney would like to note that in response to applicant's Request for Telephonic Interview filed by facsimile on January 27, 2006, a voicemail communication was received from Examiner Cumming on February 14, 2006 denying the Request for Interview even though applicant's attorney indicated in the Request for Telephonic Interview that it was applicant's attorney's position that the interpretation of claim 1 as presented in the final Official Action at paragraph 3 thereof might indicate that there was a potential misunderstanding of the claimed invention as presented in claim 1. Thus, the request was not presented for purposes of merely restating arguments of record, nor to discuss new limitations which would require more than nominal reconsideration or new search by the Examiner.

Referring now to paragraph 1-3 of the final Official Action, it is respectfully submitted that claims 1, 3, 4, 6, 8, 9, 10, 11, 12, 17, 18, 19 and 23 are not anticipated by D'Amico. At paragraph 3, the Examiner recites three portions of D'Amico by quoting

therefrom. The first quote is from column 3, lines 44-64, the second quote at the top of page 4 of the final Official Action is from claim 1, column 5, lines 1-11, and the third quote is from claim 1, column 5, lines 14-23. Although it is not specifically enumerated at page 3 of the final Official Action if these quoted portions of D'Amico pertain to claim 1, it is applicant's attorney's belief that they were intended to pertain to claim 1 since the remaining independent claims are specifically called out at page 4, last paragraph of the final Official Action. Further, at page 3 of the final Official Action, it is stated that the method of D'Amico comprises the step of transmitting first signals comprising a first communication and that this is shown in Figure 2 of D'Amico by information field (212). This first information is stated as having first associated information by reference to signaling field (206) from the base station (102) (as shown in Figure 1) to a mobile station (120) (as also shown in Figure 1).

The final Official Action further states at the last line of page 3 through page 4, lines 1-2, that D'Amico discloses transmitting second signals which comprise the first communication (212) and second associated information followed by the above-recited quote from claim 1, column 5, lines 1-11 of D'Amico. The quoted portion from claim 1 (column 5, lines 1-11) recites the assigning of a code word to each of the first and second communication channels where the code word corresponds to a transmit power level for the first and second communication channels respectively. This code word is shown in Figure 2 by reference numeral (208) forming part of the signalling field (206). Thus, each communication associated with an information field (212) has a corresponding signalling field (206) which includes a code word (208) representing a transmit power level from the base station (see column 4, lines 27-36 of D'Amico).

This of course is the intent of D'Amico as clearly set forth in the Abstract thereof and as set forth in the quoted claim 1; namely, that first and second base stations assign a code word to a respective first and second communication channel transmitting the first and second signals from the first and second base stations respectively, where the first signal contains the code word for the first communication channel and the second signal

contains the code word for the second communication channel and, wherein the mobile station (handset) determines the received signal strength for each of the first and second signals and from the respective code words determines the transmit power level for each of the first and second base stations respectively, thereby enabling the handset to select the optimum base station for communication with said handset based upon the adjusted received signal strength for each of the first and second signals.

Such a method for selecting an optimal base station by a handset in a communication system which includes first and second base stations is different from the method of transmitting signals from a plurality of base stations to the same mobile station in handoff as recited in amended claim 1. Amended claim 1 recites the transmitting of first signals and second signals, wherein the first signals comprise a first communication and first associated information from one base station and wherein the second signals comprise a second communication and second associated information and, in addition, comprises said first communication. Furthermore, the second associated information forming part of the second signal differs at least partially from the first associated information of the first signals. The second signals are transmitted from another base station of the plurality of base stations and, in particular, the second communication forming part of the second signals is only transmitted from this another base station. The amendment to claim 1 is simply to make clear that the transmitting of the second signals includes all three elements; i.e., a second communication, a second associated information and said first communication. Support for the amendment to claim 1 is found from original claim 1, as well as page 9, lines 11-24 and Figure 2. The amendment to the receiving step is to make clear that both the first communication and the second communication are received, thereby overcoming the problem in the prior art as recited at page 2, lines 10-31.

Thus, the key differing aspect of the present invention as recited in amended claim 1 is that the second signals comprise both the first communication and a second communication, whereas in D'Amico, the information field with its associated signalling

field and code word from the second base station does not further include the first communication (information field) transmitted from the first base station.

In short, the recited language in D'Amico at column 5, lines 1-11 for support of transmitting second signals comprising the first communication and second associated information as presented in the Official Action at page 3, last line through page 4, lines 1-11, does not recite transmitting second signals comprising not only a second communication and second associated information, but also said first communication. Specific reference presented with regard to column 5, lines 1-11 of D'Amico is completely silent about transmitting second signals comprising said first communication and second communication and second associated information.

In order to make clear that the transmission of the second signals comprises said first communication and said second communication in addition to the second associated information, claim 1 has been slightly amended as noted above.

Since D'Amico does not disclose transmitting second signals comprising said first communication and a second communication, in addition to a second associated word, it does not anticipate claim 1 as amended.

In addition, D'Amico associates the first communication channel and second communication channel with the first and second base stations respectively. However, claim 1 of the present application recites "transmitting first signals comprising a first communication and first associated information from one base station of said plurality of base stations." Claim 1 further recites "transmitting second signals comprising said first communication and a second communication in addition to a second associated information, from another base station." Therefore, for the first and second communication channels of D'Amico to anticipate the first and second communications of the present invention, one of the communication channels must be transmitted by both base stations. This is not taught or suggested by D'Amico.

It is further noted that Figure 2 of D'Amico shows the transmission of code words relating the multiple channels at a single base station, but by way of illustration, it is clear

from Figure 2 that the messages have the same format and structure and only contain different data in each time slot. The final Official Action suggests that Figure 2 of D'Amico anticipates the first and second signals of claim 1, however, applicant respectfully submits that this is not the case as there is no disclosure or suggestion in D'Amico of one of the two signals comprising a first communication and the other comprising both the first communication and a second communication, as recited in amended claim 1. Furthermore, the signals disclosed in Figure 2 of D'Amico are transmitted from a single base station, however, amended claim 1 states that the first signals are transmitted from a first base station and the second signals are transmitted from another base station. Applicant therefore respectfully submits that there is no disclosure in D'Amico of "transmitting first signals comprising a first communication and first associated information from one base station of said plurality of base stations" and also "transmitting second signals comprising said first communication and a second communication in addition to a second associated information, from another base station."

For all of the foregoing reasons, it is respectfully submitted that claim 1 as amended is not anticipated by D'Amico.

Since claim 1 is believed to be not anticipated by D'Amico, it is respectfully submitted that claims 3, 4, 5, 6, 8, 9 and 10 are also not anticipated by D'Amico since each of these claims depends from amended claim 1.

Please note that the rejection of claims 11 and 12 is moot since these claims have been previously cancelled.

Referring now to the anticipation rejection of claims 17 and 23 in view of D'Amico, both of these claims have been amended to particularly point out and claim that the control information is coded and that it is coded differently by first stations depending upon whether a dedicated channel or a shared channel is used to communicate with the second station. Support for the amendment to claims 17 and 23 can be found in originally filed claims 17 and 23, as well as in the specification at page 7, lines 9-11

wherein it is specifically stated that the speech and data connections use different spreading codes so that the two connections (channels) can be distinguished.

With respect to claim 17, the final Official Action states that the “assigning a code word to each of the first and second communication channels, the code word corresponding to a transmit power level for the first and second communication channels (11) in D’Amico (claim 1 at column 5, lines 1-5 of D’Amico), corresponds to different power levels and hence, the words are different and the bits of information must be different and hence, differently coded. It is respectfully submitted that this interpretation of code words as being differently coded if the bits of information in each word are not identical, is not what is commonly understood to mean “different coded.”

In the IEEE Standard Dictionary of Electrical and Electronic Terms, Fifth Edition, Copyright 1993, the verb “to code” is defined as “(c) A set of rules used to convert data from one form of representation to another. Syn: **coding scheme, data code, data element tag.**” Hence, for the coding to be different, the set of rules used must be different and whether the data being coded is the same or different, is irrelevant. Amended claim 17 specifically recites: “wherein the coded control information of said plurality of first stations controlled by a plurality of different control elements is coded differently than the coded control information controlled by the plurality of first stations controlled by the same control element.” There is no disclosure in D’Amico of coding the code words (208) shown in Figure 2 using a different coding scheme with regard to the first and second base stations.

It is therefore respectfully submitted that amended claim 17 is not anticipated by D’Amico.

Since claim 17 is not anticipated by D’Amico, it is respectfully submitted that claims 18 and 19, each of which depend from claim 17, are further not anticipated by D’Amico.

Claim 23 has been amended in a manner similar to claim 17 and for similar reasons is also believed to be distinguished over D’Amico.

Referring now to paragraph 4 of the Official Action, claim 1 is rejected as anticipated in view of Malkamaki et al (hereinafter Malkamaki), as set forth in a European Search Report of September 22, 2004. Applicant's attorney believes reference is being made to the European Patent Office Standard Search Report having a search completion date of 27 January 2000 which was submitted in applicant's Information Disclosure Statement filed upon the entry into national phase under Chapter II for the present application.

In this European Patent Office Standard Search Report, Malkamaki is cited as an "X" reference with regard to claim 1 with specific reference to column 3, lines 39-59, column 7, lines 2-10, column 8, lines 30-39 and Figure 2. As set forth in the abstract of Malkamaki, it is directed to an apparatus and method for call handover in a cellular radio system wherein in preparation of a handover from one base station (BTS1) to a second base station (BTS2), parallel physical links (R1,R2) are formed between the mobile station (MS) and the two base stations (BTS1, BTS2) whereby these base stations transmit the same signal to the mobile station (MS) in different time slots and possibly on different frequencies. There is no disclosure or suggestion of transmitting first signals comprising a first communication and first associated information from one base station of a plurality of base stations to said mobile station and transmitting second signals comprising said first communication and a second communication in addition to a second associated information wherein the second associated information differs at least partially from the first associated information, from another base station of said plurality of base stations to said mobile station and further wherein the second communication is only transmitted from said another base station of said plurality of base stations.

In Malkamaki, the same data (communication) is sent on different channels and different signal information is sent. The method described is exemplified by a TDMA system which utilizes soft handover without the need for base stations to send the same signals simultaneously. The purpose of this arrangement disclosed in Malkamaki is to

avoid signal interference problems as clearly discussed at column 3, first paragraph thereof.

It is therefore respectfully submitted that Malkamaki does not anticipate amended claim 1 of the present application which specifically recites the transmission of second signal that include the first communication and a second communication, in addition to second associated information that differs at least partially from the first associated information (which is associated with the first communication).

Referring now to paragraph 7 of the Official Action, it is respectfully submitted that claims 2, 4, 7, 13 and 14 are not obvious under 35 U.S.C. §103(a) in view of D'Amico in view of applicant's admission of prior art since each of these claims ultimately depend from amended claim 1 which as set forth above is believed to be not anticipated by D'Amico.

Furthermore, although the CDMA technique is well-known in the wireless communication art, no showing is made of paragraph 7 of the Official Action as to why the specific limitations concerning claims 7 and 14 are suggested by the use of the CDMA technique. These claims are therefore believed to be further distinguished over D'Amico in view of applicant's admission of prior art.

With regard to paragraph 8 of the Official Action, claims 15 and 16 are rejected under 35 U.S.C. §103(a) as unpatentable over D'Amico, further in view of Widegren et al. Since claims 15 and 16 both ultimately depend from amended claim 1, these claims are believed to be non-obvious in view of the dependency from amended claim 1.

At paragraph 9 of the Official Action, claims 20-22 are rejected under 35 U.S.C. §103(a) as being unpatentable in view of D'Amico, further in view of Nakagaki. These claims are believed to be distinguished over D'Amico and Nakagaki due to their ultimate dependency from amended claim 17 which, as set forth above, is believed to be not anticipated in view of D'Amico.

Furthermore, the following comments are made with regard to the section of the final Official Action entitled "Response to Arguments" that begins on page 13 of the final

Official Action. Legal arguments are presented in this section concerning what constitutes an anticipatory reference, including the statement that for a reference to be “prior art”, it is only necessary that the claims under consideration ‘read on’ something disclosed in the reference, i.e., all of the limitations of the claim are found in the reference, or ‘fully met’ by it.” It is further set forth at page 14 that “During patent examination, the pending claims must be ‘given the broadest reasonable interpretation consistent with the specification’.” citing *In re Samour*, 197 USPQ 1 (CCPA, 1978).

The Examiner then states at the paragraph beginning on page 15, “Using the ‘very broad terms used by applicant,’ D’Amico shows ‘...at the first and second base stations, assigning a code word to each of the first and second communication channels, the code word corresponding to a transmit power level for the first and second communication channels, respectively, the transmit power levels being selected from a plurality of power levels; transmitting first and second signals from the first and second base stations respectively, the first signal including the code word for the first communication channel and second signal including the code word for the second communication channel.” Applicant agrees that the language cited by the Examiner at page 15 of the Official Action is in fact part of claim 1 of D’Amico. However, as indicated above, D’Amico fails to disclose transmitting second signals comprising said first communication and a second communication in addition to a second associated information and therefore this specific limitation of claim 1 is not disclosed by D’Amico, including the very language relied upon in the final Official Action.

Furthermore, in addition to the case law relied upon by the Examiner in the section entitled “Response to Arguments,” reference should be made to *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) (*en banc*), wherein the court specifically holds that claim terms should be given their ordinary and customary meaning as those terms are used to a person of ordinary skill in the art as of the effective filing date of the patent application and that a person of ordinary skill is deemed to have read the claim terms in the context of the entire patent. In particular, the Court holds: “We

have made clear, moreover, that the ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application" (citation omitted) 75 USPQ 2d. 1321, 1326. Further, the Court holds: "Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification" 75 USPQ 2d 1321, 1326. Thus, it is the language used in the specification regarding the "first communication" and "second communication" as recited in claim 1 that primarily determines the scope of those terms. It is explained therein, including at page 3, lines 15-30, that the first and second communications are typically speech and data respectively.

In summary, the first and second communications are two communications which are typically of a different type. It is in this context that the language of claim 1 is to be read and, for reasons as set forth above, D'Amico completely fails to disclose the transmission of second signals which comprise not only a first communication as transmitted by the first signals, but also a second communication in addition to a second associated information, wherein the second associated information differs at least partially from the first associated information and wherein the second communication is only transmitted from a different base station than the transmitting of the first signals.

Therefore, it is for all of these reasons that applicant believes that the independent claims of the present application are not anticipated by the cited art.

Newly submitted claim 25 specifically recites that the first communication is of a first type and that the second communication is of a second type. There is no showing in D'Amico that the communications in information field (212) are of different types as required by newly submitted claim 25.

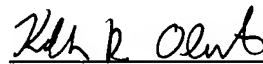
Newly submitted claims 26-41 all ultimately depend from claim 25. These dependent claims add limitations concerning the types of communications that the first and second communications are directed to. For the reasons presented above, it is

respectfully submitted that claims 26-41 are not anticipated by D'Amico or Malkamaki, nor obvious in view of the additionally cited art.

In view of the foregoing, it is respectfully submitted that the present application as amended is in condition for allowance and such action is earnestly solicited.

Respectfully submitted,

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